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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,089	01/15/2002	Allan Ginsburg	033323-002	1255

21839 7590 09/28/2005

BUCHANAN INGERSOLL PC  
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POST OFFICE BOX 1404  
ALEXANDRIA, VA 22313-1404

EXAMINER
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KRAMER, JAMES A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/045,089

Applicant(s)

GINSBURG ET AL.

Examiner

James A. Kramer

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/12/05 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox in US Patent number 6,260,047.

Fox teaches a performance measurement system for measuring performance of a medium in which units of inventory are used, wherein said units are advertisement opportunities. Fox further teaches revenue maximization system which determines a price for said units based on predetermined pricing considerations (see for example column 4, lines 55-60).

Art Unit: 3627

Examiner notes that “performance of a medium” is interpreted as ratings or number of listeners. Further, the teaching of Fox of “cost per rating point” inherently includes some sort of performance measurement in order to determining the rating points for a show. Further, Examiner points to Applicant’s own specification (page 4, lines 5-7) which teaches that Arbitron ratings for radio shows is old and well known. Examiner asserts that such a ratings service is inherently part of Fox in order to determine a cost per rating point. Without a system to determine the rating point, there would be no way to do this calculation. As such, a performance measurement system is necessarily present.

Further, Examiner asserts that “cost per rating point” represents a predetermined price consideration used to determine the price for an advertisement opportunity.

Fox teaches a central information storage system for receiving information from said performance measurement system and revenue maximization system to generate scenarios wherein various combinations of units are grouped together to meet a buyer’s criteria (see for example column 4, lines 15-25). Examiner notes that a ranked table of possible options for media opportunities, as taught by Fox represents scenarios as well as Applicant’s scenario planner (see column 5, lines 50-55).

Fox does not specifically teach that the buyer’s criteria include number of people (ratings) and frequency people will be exposed.

Examiner notes that Fox does teach other criteria may be applied by the software program in the rankings of time slots presented to the user (see for example column 5, lines 8-29). Further, Examiner notes that ratings are part of the original rankings (see

Art Unit: 3627

cost per rating point). It would have been obvious to one of ordinary skill in the art at the time of the invention to also include frequency as part of the this criteria. In other words to include the number of slots the advertiser wishes to purchase (frequency). One of ordinary skill in the art would be motivated to modify the reference in order to provide selections that correspond to the customer's choice.

Fox teaches information related to an extent of an audience to which said units are exposed (see for example column 5, lines 8-29).

Fox teaches predetermined pricing considerations includes total number of unsold units, category of buyer, buyer's history and budget of seller (see for example column 1, lines 40-45; column 4, lines 47-65).

Fox teaches changing the number of units available (see for example column 5, lines 63-65).

Fox teaches the utilization of economic factors and filters (see for example column 4, lines 60-65). Examiner notes that Maxagrid represents this limitation.

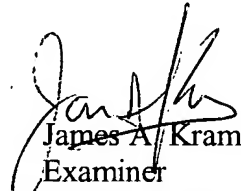
Examiner notes that claims 8-21 are substantially similar to claims 1-7 and as such are rejected with the same analysis as applied to claims 1-7 above.

Art Unit: 3627

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272 6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James A. Kramer  
Examiner  
Art Unit 3627  
9/20/05

jak